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PD-02W234

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

MARY MORABITO O'NEILL, et al.

Ser. No. 10/615,133

Filed: July 8, 2003

For: OBSCURATION METHOD FOR REDUCING THE
INFRARED SIGNATURE OF AN OBJECT)
) GAU: 3641
) Examiner:
) T. Chambers
)RESPONSE TO ADVISORY ACTION

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

The attachment to the Advisory Action, an attempt to issue a new final rejection of previously unrejected claims, as an attachment to an Advisory Action, is improper for three reasons.

First, the rules do not provide for issuing an office action that newly rejects previously pending claims as an attachment to an advisory action.

Second, claims 13 and 21 were not previously rejected. The attachment thus attempts to make final the first rejection of claims that were not previously rejected.

Third, the argument of paragraph 31 of the attachment is not correct. No claim was amended in the prior Response to the Office Action of January 31, 2006, which would justify making a new office action final.

Applicant will proceed to appeal on the basis that claims 13 and 21 have not

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been properly rejected.

If the Examiner intends to withdraw the case from appeal in order to make a proper nonfinal rejection of claims 13 and 21, Applicant requests that the Examiner inform Applicant immediately rather than waiting for Applicant to prepare and file an Appeal Brief.

Applicant makes this request because the PTO is highly concerned with improving the efficiency of the examination process for itself and applicants, at least in its public statements. Applicant wishes to support this effort by the PTO. One major and increasing cause of inefficiency in recent years is examiners who take one position during prosecution, forcing the applicant to file an appeal brief responsive to that position, and then change that position to cause the time and expenses of preparing that appeal brief to be wasted and the PTO's processing of that appeal brief to be wasted.

To force Applicant to take the time and go to the expense of preparing and filing an appeal brief when it will be mooted by withdrawing or changing the ground of rejection goes directly against the PTO's goal of improving efficiency. If the case is to be withdrawn or the rejection modified, efficiency will be improved by withdrawing the application from final rejection and making the change now, rather than after the appeal brief is filed.

In the event that the Examiner does not respond to this inquiry, Applicant will take it as established that the Examiner will not withdraw the application from appeal or modify the grounds of rejection after this point, and will proceed accordingly. A later change will be an intentional attempt to decrease the efficiency of the PTO.

Respectfully submitted,



William Schubert

Reg. No. 30,102

Attorney for Applicant